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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 129

COMPTROLLER OF THE TREASURY OF THE STATE OF MARYLAND,

Petitioner,

v.

THE GLENN L. MARTIN COMPANY, (Now Known As The Martin Company),

Respondent.

PETITIONER'S REPLY BRIEF

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Respondent's Brief In Opposition clearly shows that the primary question in this case is one of federal constitutional interpretation. This question should be decided by this Court and by no other, in order that a State Court will not be the final arbiter of this important issue under the Federal Constitution.

At the conclusion of its argument that the decision of the Court of Appeals was based upon an adequate non-federal ground, Respondent stated:

> " . . . Even under the petitioner's theory, the most that can be said is that Maryland has given a broader construction to its due process clause than that given the federal one by this Court. And even if that were true, Maryland is at perfect liberty to do just that. *Minnesota v. National Tea Co., supra.*"

(Respondent's Brief in Opposition, p. 5)

Although theoretically Maryland may have been at liberty in the past to give its "due process" clause, Article 23, Maryland Declaration of Rights, a broader construction than the federal one in the Fourteenth Amendment, the Court of Appeals of Maryland, as set forth in the Petition for Writ of Certiorari (pp. 9-11), has definitely not done this. On the contrary, the Court of Appeals of Maryland has unequivocally stated that Maryland's "law of the land" clause is synonymous with the federal "due process of law" clause. *Oursler v. Tawes,* 178 Md. 471 at 483, 13 A. 2d 763 at 768. Consequently, if the Court of Appeals of Maryland, as claimed by Respondent, has given a "broader construction of (the Maryland) due process clause than that given the federal one by this court" (Respondent's Brief in Opposition, p. 5) this means that the Court of Appeals of Maryland of necessity (since it views the two due process clauses — State and Federal — as co-extensive) has usurped the function of the United States Supreme Court, and has given the federal due process clause a broader interpretation than that given by this Court. The Maryland Court of Appeals is thus extending the reach of the Fourteenth Amendment in order to strike down the Maryland statute. *This the Maryland Court of Appeals is not at liberty to do without having its decision reviewed by this Court since the Maryland Court of Appeals should not be the final arbiter of this important issue under the Federal Constitution. Minnesota v. National Tea Co.,* 309 U. S. 551 at 557, 84 L. Ed. 920 at 924. There can be no question about the importance of this issue since, as the Court of Appeals of Maryland pointed out in its opinion (R. 40), this Court, the United States Supreme Court, has never clearly defined the permissible extent of the reach of retroactive tax legislation.

It should also be noted that the New York cases cited by Respondent in support of its argument for an adequate independent non-federal ground are clearly distinguishable since, as this Court pointed out in the *National Tea Co.* case, *supra*, 309 U. S. 551 at 556, 84 L. Ed. 920 at 923, the New York Court of Appeals, unlike Maryland's Court of Appeals, has specifically ruled that New York's own conception of due process governs, although the same phrase in the Federal Constitution may have been given a different scope by the decision of the United States Supreme Court. Maryland's Court of Appeals, on the contrary, has said in no uncertain terms, in construing the Maryland due process clause that "The decisions of the Supreme Court of the United States on the Fourteenth Amendment are 'practically direct authorities' ". *Home Utilities Co. v. Revere,* 209 Md. 610 at 614, 122 A. 2d 109 at 110-111 (1956). See also *Frostburg v. Jenkins,* 215 Md. 9 at 15, 136 A. 2d 852 at 854-855 (1957).

It should further be noted that most of the cases cited by the Court of Appeals of Maryland in its opinion on the question of the permissible reach of retroactive tax legislation (R. 31-46) are decisions of the United States Supreme Court. Thus it is apparent, even on the face of the opinion of the lower court, that the question which the lower court was deciding was essentially a federal question. That ground of the holding resting on the Maryland due process clause is either merely surplusage or else so interwoven with the federal question that it cannot be said to be an independent interpretation of Maryland law and consequently not an adequate independent non-federal ground. Cf. *State Tax Commission v. Van Cott,* 306 U. S. 511 at 514, 83 L. Ed. 950 at 952.

CONCLUSION

For the foregoing additional reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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